No. 16-1215

In the Supreme Court of the United States

LAMAR, ARCHER & COFRIN, LLP, PETITIONER

v.

R. SCOTT APPLING

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

The Bankruptcy Code bars an individual debtor from receiving a discharge of any debt for "money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by * * * false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's * * * financial condition." 11 U.S.C. 523(a)(2)(A). A debt that arises from a fraudulent statement "respecting the debtor's * * * financial condition" is also nondischargeable, but only if the statement is in writing and additional requirements are met. 11 U.S.C. 523(a)(2)(B). The question presented is as follows:

Whether a debtor's statement concerning one of his assets, offered as evidence of his ability to pay a debt, is a "statement respecting the debtor's * * * financial condition" within the meaning of 11 U.S.C. 523(a)(2).

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INTEREST OF THE UNITED STATES

This case concerns the meaning of the phrase "statement respecting the debtor's * * * financial condition" in a Bankruptcy Code provision that addresses the dischargeability of certain fraudulently incurred debts. 11 U.S.C. 523(a)(2)(A)-(B). The United States is the largest creditor in the Nation, and federal agencies frequently appear as creditors in bankruptcy cases. Additionally, United States Trustees—who are Department of Justice officials appointed by the Attorney General—supervise the administration of bankruptcy cases. 28 U.S.C. 581-589a; see 11 U.S.C. 307 ("The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under [the Bankruptcy Code]."). The United States thus has a substantial interest in this Court's resolution of the question presented. At the

Court's invitation, the United States filed a brief at the petition stage of this case.

STATUTORY PROVISION INVOLVED

Pertinent portions of 11 U.S.C. 523 are reprinted in an appendix to this brief. App., *infra*, 1a-2a.

STATEMENT

1. A central purpose of the federal bankruptcy system is to give insolvent debtors a "fresh start" by discharging their debts, while ensuring the maximum possible equitable distribution to creditors. See, *e.g.*, *Central Va. Cmty. Coll.* v. *Katz*, 546 U.S. 356, 364 (2006); *Stellwagen* v. *Clum*, 245 U.S. 605, 617 (1918). In furtherance of a general policy of "affording relief only to an 'honest but unfortunate debtor,'" however, Congress has enacted various provisions that prevent or limit the discharge of debts that arise from a debtor's fraudulent acts. *Cohen* v. *de la Cruz*, 523 U.S. 213, 217 (1998) (quoting *Grogan* v. *Garner*, 498 U.S. 279, 287 (1991)). Such provisions reflect Congress's evident determination that, in certain circumstances, "creditors' interest in recovering full payment of debts * * * outweigh[s] the debtors' interest in a complete fresh start." *Grogan*, 498 U.S. at 287.

Section 523(a) of the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, declares various kinds of debts to be nondischargeable in an individual's bankruptcy. 11 U.S.C. 523(a).[1] As relevant here, Section 523(a)(2)(A) provides that a discharge under Chapter 7, 11, 12, or 13 of the

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[1] Although Section 523(a) applies by its terms only to "individual debtor[s]," 11 U.S.C. 523(a), Congress has extended its application to corporate debtors under Chapter 11 with respect to debts owed "to a domestic governmental unit" or "to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute." 11 U.S.C. 1141(d)(6); cf. 31 U.S.C. 3729-3733 (False Claims Act).

Bankruptcy Code "does not discharge an individual debtor from any debt * * * for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by * * * false pretenses, a false representation, or actual fraud, *other than a statement respecting the debtor's or an insider's financial condition*." 11 U.S.C. 523(a)(2)(A) (emphasis added).

To establish nondischargeability under Section 523(a)(2)(A), a creditor typically must show, *inter alia*, "justifiable" reliance on the debtor's deceptive or fraudulent conduct. *Field* v. *Mans*, 516 U.S. 59, 61, 69-76 (1995). Courts have also construed Section 523(a)(2)(A) to require proof of "materiality" and "intent [to deceive]." *Id.* at 68; see, *e.g.*, *In re Curran*, 855 F.3d 19, 28 (1st Cir. 2017) (listing elements).

Section 523(a)(2)(B) addresses the dischargeability of debts incurred through "a statement * * * respecting the debtor's or an insider's financial condition." 11 U.S.C. 523(a)(2)(B)(ii). Section 523(a)(2)(B) specifies that, for a debt incurred through the use of such a statement, the debt is excepted from discharge only if the statement was "in writing"; was "materially false"; was "reasonably relied" upon by "the creditor to whom the debtor is liable"; and was "caused to be made or published" by the debtor "with intent to deceive." 11 U.S.C. 523(a)(2)(B)(i)-(iv). Section 523(a)(2)(B) thus differs from Section 523(a)(2)(A) by requiring that the statement be "in writing" and that the creditor show "reasonabl[e]" (rather than simply justifiable) reliance.

2. a. In July 2004, respondent hired petitioner, a law firm, to represent him in litigation against the former owners of a business he had recently purchased. Pet. App. 46a-47a. Respondent soon fell behind on his legal bills, and by March 2005 he owed petitioner more than

$60,000. *Id.* at 47a. Petitioner advised respondent by letter that it would terminate its representation unless the overdue fees were promptly paid. *Id.* at 47a-48a.

On March 18, 2005, respondent met with Robert Lamar, a partner of the petitioner law firm, at the office of Robert Gordon, who served as local counsel. Pet. App. 47a-48a. According to Lamar, respondent stated at that meeting that he had "absolutely no assets of any type available to satisfy [the attorneys'] fees" except for a "substantial [tax] refund * * * in excess of $100,000," which respondent allegedly represented that he would soon receive and which he "pledge[d]" toward petitioner's fees. J.A. 54-55; see J.A. 66. Gordon recalled a similar promise, although in his recollection respondent had not yet prepared the amended tax return, and the $100,000 figure was an estimate. J.A. 35. According to respondent, although he told Lamar and Gordon that he would be pursuing a tax refund of "potentially $100,000," he made no "promise[s]" about that amount or about how he would spend any refund. J.A. 98, 115. After the meeting, petitioner continued to represent respondent and did not pursue collection of the fees. Pet. App. 48a; J.A. 36, 55.

In June 2005, respondent and his wife filed an amended tax return, which sought a refund of $60,718. Pet. App. 48a. In October 2005, the Internal Revenue Service adjusted the amount to $59,851 and issued the refund. *Ibid.* Respondent did not use the refund to pay the overdue legal fees. *Id.* at 48a-49a.

In November 2005, at respondent's request, respondent and his wife met with Lamar to discuss the outstanding fees and the future of their professional relationship. Pet. App. 49a; J.A. 56-58, 106-109. According to Lamar, respondent falsely stated at this meeting that

he had not yet received the tax refund, and also failed to disclose that the refund was for significantly less than $100,000. J.A. 57, 63, 67. According to respondent and his wife, respondent informed Lamar at this meeting that he had received the tax return but planned to use it to aid his struggling business. J.A. 109, 114, 133. In all events, after the November 2005 meeting, petitioner continued to represent respondent through the end of the underlying litigation, and petitioner continued to forbear from collection. Pet. App. 49a; J.A. 58, 67.

In June 2006, petitioner sent respondent a letter renewing its demand for immediate payment of all outstanding fees, stating that it had just learned that respondent had obtained his tax refund many months earlier but had failed to use it to pay petitioner. J.A. 58-60. Respondent refused to pay. Cf. J.A. 62, 69.

More than five years later, petitioner sued respondent in state court for its overdue fees plus interest. C.A. App. A113. In October 2012, the court entered judgment against respondent for $104,179.60. Pet. App. 23a.

b. Three months later, respondent and his wife filed a petition for bankruptcy relief under Chapter 7. Pet. App. 23a. Petitioner initiated an adversary proceeding in the bankruptcy court seeking a determination that the debt arising from petitioner's state-court judgment against respondent was nondischargeable under 11 U.S.C. 523(a)(2)(A). In its amended complaint, petitioner alleged that respondent had made false statements about his tax return at the March and November 2005 meetings; that those statements had induced petitioner to continue its representation and forbear from collecting the existing debt; and that respondent had thereby committed "false pretenses, a false representation, or actual fraud." C.A. App. A42 (quoting 11 U.S.C.

523(a)(2)(A)); see *id.* at A33-A43. Respondent moved to dismiss, arguing that the alleged false statements were "statement[s] respecting [his] * * * financial condition"; that petitioner's objection to discharge therefore was governed by Section 523(a)(2)(B); and that petitioner's objection failed because the alleged false statements had not been "in writing." See Pet. App. 70a (citation omitted).

The bankruptcy court denied respondent's motion to dismiss. Pet. App. 67a-81a. The court construed the phrase "statement respecting the debtor's * * * financial condition" in Section 523(a)(2) to encompass only "communications that purport to state the debtor's overall net worth, overall financial health, or equation of assets and liabilities." *Id.* at 71a-72a (citation omitted). The court held that, because respondent's alleged statements had involved only a "single asset," they were not "representation[s] 'respecting the debtor's ... financial condition,'" and that petitioner's objection to discharge therefore was governed by Section 523(a)(2)(A). *Id.* at 73a, 76a.

After a two-day trial, the bankruptcy court ruled that respondent's debt to petitioner was nondischargeable under Section 523(a)(2)(A). The court found that respondent had "knowingly misrepresented the amount of the tax refund" at the March 2005 meeting, Pet. App. 55a; that he had made a "knowingly false representation at the November 2005 meeting that he had not yet received the refund," *id.* at 58a; and that he had "committed a false pretense by not disclosing the true amount of the refund," *id.* at 59a. The court further found that petitioner had justifiably relied on those representations in forgoing immediate collection of the outstanding fees, *id.* at 60a-62a, and that this forbearance amounted to an "extension [of credit]" that "made the entire debt nondischargeable," *id.* at 65a-66a; see also *id.* at 79a-81a.

3. The district court affirmed. Pet. App. 20a-44a. Like the bankruptcy court, the district court concluded that, because "[respondent's] statements about his tax refund involved a single asset," they did not constitute statements respecting his financial condition. *Id.* at 30a. The district court also sustained the bankruptcy court's other factual and legal determinations. See *id.* at 31a-44a.

4. The court of appeals reversed. Pet. App. 1a-19a. The court held that respondent's alleged misrepresentations were "'statements respecting [his] financial condition'"; that petitioner's objection to discharge thus was governed by Section 523(a)(2)(B); and that petitioner's objection failed because the false statements had not been made "in writing." *Id.* at 14a (citing 11 U.S.C. 523(a)(2)(B)). The court explained that, "even if 'financial condition' means the sum of all assets and liabilities, it does not follow that the phrase 'statement *respecting* the debtor's . . . financial condition' covers only statements that encompass the entirety of a debtor's financial condition at once." *Id.* at 8a (citation omitted). Rather, the court found it "[un]ambiguous" that "[a] statement about a single asset" "can 'respect' a debtor's 'financial condition,'" inasmuch as such a statement "'relates to' or 'impacts' a debtor's overall financial condition." *Id.* at 8a-9a, 12a.

Judge Rosenbaum concurred. Pet. App. 14a-19a. Although she viewed the statutory text as ambiguous, *id.* at 15a, she agreed with the panel's interpretation of Section 523(a)(2), *id.* at 19a.

SUMMARY OF ARGUMENT

The text, history, and purpose of 11 U.S.C. 523(a)(2) demonstrate that the phrase "statement respecting the debtor's * * * financial condition" encompasses an affirmative representation about a single asset if that representation is offered as evidence of the debtor's ability to pay.

A. The Bankruptcy Code precludes a debtor from obtaining the discharge of any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by" a false representation or other fraud. 11 U.S.C. 523(a)(2). The Code then differentiates between fraudulent conduct that involves a "statement respecting the debtor's or an insider's financial condition," and fraudulent conduct that does not. 11 U.S.C. 523(a)(2)(A). Debts for money, property, services, or credit obtained by a statement respecting the debtor's financial condition are excepted from discharge only where a creditor satisfies the requirements of Section 523(a)(2)(B).

The phrase "statement respecting the debtor's * * * financial condition" is naturally understood to encompass a representation about a debtor's asset that is offered as evidence of ability to pay. A "statement" is an "'embodiment in words of facts or opinions,'" Pet. App. 10a; "respecting" is a term of breadth that means "'relati[ng] to; regarding; [or] concerning,'" *id.* at 8a; and a debtor's "financial condition" is his "overall financial status," *id.* at 7a. An affirmative representation that sheds light on a debtor's financial status is thus a statement "respecting" the debtor's financial condition, just as a representation about a patient's disease is one respecting the patient's medical condition.

Whether the statutory phrase covers a statement about a particular asset depends, however, on the statement's context and purpose. A statement is one "respecting" a debtor's financial condition only if offered as evidence of the debtor's financial circumstances.

B. The statutory lineage of the phrase "statement respecting * * * financial condition" reinforces this understanding. Under prior bankruptcy law dating to 1926, Congress established exceptions to discharge where an individual debtor had procured credit through a "materially false statement in writing respecting his financial condition." That language, both before and after 1960 amendments, was construed by the federal courts of appeals to encompass not only statements that purported to list all of a debtor's assets and liabilities, but also statements that addressed only one or some of a debtor's assets. In adopting substantially the same phrase in the 1978 Bankruptcy Code, Congress is presumed to have been aware of that interpretation and to have intended that the phrase retain its established meaning.

C. This interpretation is also consistent with Congress's apparent purposes. Petitioner emphasizes that Congress has historically enacted bankruptcy laws to protect the "honest but unfortunate debtor" (Pet. Br. 34-36), not to reward fraudulent ones. But the text of Section 523(a)(2) clearly shows that Congress declined to preclude the discharge of debts resulting from "statement[s] respecting * * * financial condition" unless those statements were made in writing. Congress could reasonably choose to provide debtors an additional protection with respect to a category of statements that creditors had previously abused. And when a debtor's statement about a particular asset is offered as evidence of his ability to pay, and the statement actually induces

a creditor to extend value to the debtor, no evident reason exists to treat that statement differently from a statement about the debtor's overall finances that is offered for the same purpose and has the same effect.

ARGUMENT

A. The Statutory Text And Context Show That A Statement About A Single Asset Can Be A "Statement Respecting * * * Financial Condition"

"Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Park 'N Fly, Inc.* v. *Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). This Court's "interpretation of the Bankruptcy Code" therefore starts "'with the language of the statute itself.'" *Ransom* v. *FIA Card Servs., N. A.*, 562 U.S. 61, 69 (2011) (quoting *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989)).

1. The Bankruptcy Code generally permits an individual debtor in a Chapter 7, 11, 12, or 13 proceeding to obtain a "discharge" of non-excepted debts. See 11 U.S.C. 727, 1141, 1228, 1328. A discharge "operates as an injunction against the commencement or continuation of an action * * * to collect, recover or offset any such debt as a personal liability of the debtor." 11 U.S.C. 524(a)(2); see also 11 U.S.C. 524(a)(1) and (3).

The Bankruptcy Code provides, however, that "[a] discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt" described in the nineteen paragraphs of Section 523(a). 11 U.S.C. 523(a)(1)-(19). A debt that falls within any of those paragraphs is nondischargeable, and the creditor may continue to pursue payment even if the debtor's other debts are discharged.

See generally 4 *Collier on Bankruptcy* ¶ 523.01 (Richard Levin & Henry J. Sommer, eds., 16th ed. 2015) (*Collier*); 6 *Collier* ¶ 727.15 (2016).

Section 523(a)(2) renders nondischargeable any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by" any conduct described in that provision's subparagraphs. 11 U.S.C. 523(a)(2). As relevant here, subparagraph (A) bars discharge of a debt for money, etc., that is obtained by "false pretenses, a false representation, or actual fraud, *other than a statement respecting the debtor's or an insider's financial condition.*" 11 U.S.C. 523(a)(2)(A) (emphasis added). Subparagraph (B) bars discharge when money, etc., was obtained by "use of a statement in writing[] (i) that is materially false; (ii) *respecting the debtor's or an insider's financial condition*; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive." 11 U.S.C. 523(a)(2)(B) (emphasis added). Section 523(a)(2) thus imposes somewhat more demanding requirements on a creditor who objects to discharge when the pertinent misrepresentation was one "respecting the debtor's * * * financial condition." See p. 3, *supra*.

2. The phrase "statement respecting the debtor's * * * financial condition" is naturally understood to encompass a representation about a debtor's asset that is offered as evidence of ability to pay a debt.[2] That conclusion follows from a proper understanding of the

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[2] References herein to "ability to pay" should also be understood to encompass circumstances in which a creditor seeks to determine

phrase's component parts, cf. *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) ("[A] statute ought * * * to be so construed that * * * no clause, sentence, or word shall be superfluous, void, or insignificant.") (citation omitted), and of the location of that phrase within the Bankruptcy Code, cf. *Utility Air Regulatory Grp.* v. *EPA*, 134 S. Ct. 2427, 2441 (2014) ("[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme.") (citation omitted).

a. In ordinary usage, a "statement" is "that which is stated; an embodiment in words of facts or opinions; a narrative; recital; report; account." Pet. App. 10a (quoting *Webster's New International Dictionary of the English Language* 2461 (2d ed. 1961) (*Webster's New International Dictionary*)) (brackets omitted). The Bankruptcy Code does not define that term or suggest that, as used in Section 523(a)(2), it has other than its usual meaning. Although the term "financial condition" is used in various bankruptcy provisions,[3] it likewise is not defined by the Code. The parties assert, and the United States agrees, that the term "[f]inancial condition" refers to a person's "overall financial status." *Id.* at 7a; cf. Pet. Br. 23-24; Resp. Br. 25. And all agree that one way to describe a debtor's "'overall financial status'" is to

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a debtor's financial eligibility for some benefit (*e.g.*, need-based assistance), even if the creditor would not have demanded repayment of that benefit absent the debtor's fraud.

[3] With respect to most entity debtors, for example, the Code defines the term "insolvent" to mean the "*financial condition* such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of" certain specified assets. 11 U.S.C. 101(32)(A) (emphasis added); see also 11 U.S.C. 111(c)(2)(E), 363(*l*), 365(b)(2)(A), (b)(3)(A), and (e)(1)(A), 524(g)(4)(A)(ii)(IV), 541(c)(1)(B), 545(1)(E), 727(a)(3), 1103(c)(2), 1106(a)(3), and 1142(a) (all referring to "financial condition").

specify "the sum total of [his] assets and debts." Resp. Br. 25.

Joining the terms "statement" and "financial condition" is the preposition "respecting." That word means "with regard or relation to; regarding; concerning," Pet. App. 8a (quoting *Webster's New International Dictionary* 2123) (brackets omitted), or "[w]ith respect to; with reference to; as regards," *ibid.* (quoting *Oxford English Dictionary* (online ed.)); see Resp. Br. 18 & n.2 (citing other dictionaries). Both "respecting," and the synonyms by which it is defined, have long been understood as terms of breadth.

For example, the Court has given the Property Clause, which authorizes Congress to "make all needful Rules and Regulations *respecting* the Territory or other Property belonging to the United States," U.S. Const. Art. IV, § 3, Cl. 2 (emphasis added), an "expansive reading." *Kleppe* v. *New Mexico*, 426 U.S. 529, 539-540 (1976). And in *Presley* v. *Etowah County Commission*, 502 U.S. 491 (1992), the Court considered whether changes to the structure of two county commissions were "changes '*with respect to* voting' within the meaning of § 5 of the Voting Rights Act of 1965." *Id.* at 494 (quoting 42 U.S.C. 1973c (1988)) (emphasis added). The Court concluded that the changes did not so qualify because they "ha[d] *no direct relation to, or impact on*, voting." *Id.* at 506 (emphasis added).

b. Just as a representation "can 'relate to' or 'concern' someone's health without describing [the person's] entire medical history," a statement "can 'respect' a debtor's 'financial condition' without describing the overall financial situation of the debtor." Pet. App. 8a. Because a person's financial condition is the "sum of all assets and liabilities," *ibid.*, a creditor's "knowledge

of one asset or liability" bears on that condition by providing a "step toward knowing whether the debtor is solvent or insolvent," *id.* at 9a. The court of appeals thus was correct to hold that "a statement about a single asset can be a 'statement respecting the debtor's . . . financial condition.'" *Id.* at 14a.

Whether the statutory phrase covers a statement about a particular asset depends on the statement's context and purpose. If the owner of a painting represents that the painting is an original Vermeer, the statement is one "respecting" the owner's "financial condition" if it is made to induce a creditor to extend a loan, because its purpose in that context is to give evidence of the owner's financial ability to repay the loan. See, *e.g.*, *Engler* v. *Van Steinburg*, 744 F.2d 1060, 1061 (4th Cir. 1984) (concluding that a "debtor's assertion that he own[ed] certain property free and clear of other liens," made in obtaining a loan, was a "statement respecting his financial condition"). But the same statement would not be one "respecting" the owner's "financial condition" if it was made to induce a potential buyer to pay a high price for the painting. Although the statutory phrase encompasses statements that provide less-than-complete accounts of a debtor's financial condition, it is limited to statements that are made to shed light on what that financial condition is.

Contrary to petitioner's assertion (Br. 46), this understanding does not inject an "additional, subjective layer" into the analysis. Section 523(a)(2) concerns debts that are "obtained by" fraud, meaning debts arising from a creditor's detrimental reliance on a debtor's misrepresentation or fraudulent act. 11 U.S.C. 523(a)(2); see *Field* v. *Mans*, 516 U.S. 59, 66 (1995) (noting that

"some degree of reliance is required to satisfy the element of causation inherent in the phrase 'obtained by'" in Section 523(a)(2)). To establish that reliance element, a creditor opposing discharge under Section 523(a)(2) must explain *why* it viewed the debtor's allegedly false representation as relevant to its decision whether to extend money, property, services, or credit to the debtor. When (as in this case) the creditor persuades a court that it relied on a particular statement as evidence of the debtor's ability to pay, see Pet. App. 61a, no further subjective inquiry is needed to verify that the statement was one "respecting the debtor's * * * financial condition."

3. The contrary interpretation adopted by the Fifth and Tenth Circuits, and the slightly different approach now advocated by petitioner, suffer from significant flaws.

The Fifth and Tenth Circuits have interpreted the phrase "statement respecting * * * financial condition" by relying on the concept of a "financial statement" as used in business parlance. See *In re Bandi*, 683 F.3d 671, 676 (5th Cir. 2012) (concluding that the phrase was "meant to embody terms commonly understood in commercial usage"), cert. denied, 568 U.S. 1086 (2013); *In re Joelson*, 427 F.3d 700, 709, 710 (10th Cir. 2005) (stating that "[t]he term 'financial statement' has a strict, established meaning," and "suggesting that the phrase 'statement respecting [the debtor's] financial condition' * * * should be given the same meaning"), cert. denied, 547 U.S. 1163 (2006). Those courts concluded that a debtor's "statement respecting * * * financial condition" includes only those representations that resemble, or are "analogous" to, "balance sheets, income statements, statements of changes in overall financial position, or income and debt statements that

present the debtor or insider's net worth, overall financial health, or equation of assets and liabilities." *Bandi*, 683 F.3d at 677 n.29 (quoting *Joelson*, 427 F.3d at 714).

That cramped construction is unsound. If Congress had intended Section 523(a)(2)(B) to apply only to a debtor's "financial statement," it could easily have so specified, but it instead used language that is both more expansive and less technical. Interpreting that provision to apply only to "financial statements" would be particularly anomalous in the context of the individual debtors to whom Section 523(a) applies, many of whom may not prepare or maintain a comprehensive catalogue of all their assets and liabilities. See 11 U.S.C. 523(a) (applying to "individual" debtors); but cf. p. 2 n.1, *supra*. And if the provision were intended to apply only to "financial statements," it would have been unnecessary to specify under Section 523(a)(2)(B) that such statements must be made "in writing" to render the resulting debts nondischargeable, because formal "financial statements" are almost always in writing. See Pet. App. 11a ("[R]eading the statute to cover only financial statements would render the writing requirement surplusage.").

Courts adopting this narrow interpretation have also relied in part on this Court's prior reference to Section 523(a)(2)(B) as a provision concerned with "false financial statements." *Field*, 516 U.S. at 65, 76. But the Court used that term as a shorthand rather than as a precise description of Section 523(a)(2)(B)'s coverage, which was not at issue in *Field*. And the *Field* Court elsewhere alluded to Section 523(a)(2)(B) as embracing a false representation concerning a debtor's "bank balance," *id.* at 76, which describes a single asset.

Petitioner's slightly different approach also lacks merit. Petitioner posits that, in addition to covering

comprehensive recitations of assets and liabilities, the phrase "statement respecting the debtor's * * * financial condition" encompasses informal representations that characterize a debtor's bottom line, including "holistic" statements like "Don't worry, I am above water" or "I am solvent" (Pet. Br. 19, 29).[4] Petitioner maintains, however, that a statement about a single asset categorically does not qualify, even when a creditor relies on it as evidence of the debtor's ability to pay.

Petitioner's approach would give the statute a haphazard quality that lacks a strong textual foundation and would further no evident congressional purpose. Under petitioner's interpretation, the phrase "statement respecting * * * financial condition" would apparently cover both (a) an itemized list of all of a debtor's assets and liabilities, even if that list does not articulate a bottom-line conclusion as to the debtor's overall financial condition; and (b) a bottom-line conclusion about the debtor's overall financial condition, even if it identifies no specific assets or liabilities. Yet the phrase would exclude a partial roster of assets and/or liabilities, even when it was offered and relied upon as evidence of the debtor's financial circumstances. And it is entirely unclear why Congress would require vague representations like "I am in good financial shape" (Pet. Br. 28) to be in writing to render a debt nondischargeable, while treating a false oral statement like "I have $500,000 of

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[4] In an unpublished opinion, the Fifth Circuit recently interpreted its prior decision in *Bandi* to cover such holistic statements. See *In re Haler*, 708 Fed. Appx. 836, 840–841 (2017) (holding that "oral representations" that debtor was in "very fine legally [sic] financial shape" and had "plenty of cash to operate [the] business" were statements respecting financial condition) (brackets in original).

equity in my home" as a sufficient ground for precluding discharge.

4. Petitioner's counterarguments are unpersuasive. Petitioner suggests (Br. 27-28, 31-33) that the term "respecting" means "about," "concerning," or "with reference to," but *not* "related to." Yet petitioner fails to identify any difference in meaning among those terms. A statement made by a debtor about a particular asset, made to show his ability to pay a debt, is also naturally described as a statement *about*, *concerning*, or *with reference to* his financial condition. See, *e.g.*, *In re Long*, 774 F.2d 875, 877 & n.1 (8th Cir. 1985) (allegation that debtor "obtained excessive loans by misrepresenting the value of [his company's] inventory" was one that "concerns the financial condition of [the company] and is thus governed by [Section] 523(a)(2)(B)"). Nor is it significant that Congress used the phrase "relating to" elsewhere in the Bankruptcy Code. Cf. Pet. Br. 29. Congress "is permitted to use synonyms," *Tyler* v. *Cain*, 533 U.S. 656, 664 (2001), and both dictionaries and judicial opinions have treated "respecting" and "relating to" as essentially synonymous. See p. 13, *supra*.

There is likewise no substantial basis for petitioner's concern (Br. 31) that "little will be left covered by Section 523(a)(2)(A)'s general rule" if its interpretation is not adopted. Statements respecting a debtor's finances are of course common in credit transactions, where evidence bearing on the likelihood of repayment is central to a creditor's decision whether to consummate the transaction. But Section 523(a)(2)(A) is not limited to credit transactions; it applies more broadly to debts for "money, property, [and] services" that the debtor obtained through fraud or misrepresentation.

For example, if a seller misrepresents the value of the goods or services he sells to a buyer, and if the buyer later obtains a fraud judgment against the seller, the buyer may object to discharge of the resulting debt under Section 523(a)(2)(A) if the seller later declares bankruptcy. Cf. *Grogan* v. *Garner*, 498 U.S. 279, 280-281, 290 (1991). Federal agencies participating as creditors in bankruptcy proceedings often oppose discharge under Section 523(a)(2)(A) in these circumstances. See, *e.g.*, *In re Bocchino*, 794 F.3d 376, 380-383 (3d Cir. 2015) (SEC judgment against debtor who worked as stockbroker and who misrepresented the value of the investments he sold was nondischargeable); *United States* v. *Spicer*, 57 F.3d 1152, 1155-1161 (D.C. Cir. 1995) (debtor's promise to pay a monetary settlement of the government's False Claims Act claims was nondischargeable), cert. denied, 516 U.S. 1043 (1996); *In re Austin*, 138 B.R. 898, 911-915 (Bankr. N.D. Ill. 1992) (FTC's judgment against art dealer for misrepresentations about authenticity and value of artwork was nondischargeable).

Even as to credit transactions, Section 523(a)(2)(A) applies if a debtor's misrepresentation relates to something other than his financial circumstances, such as his purpose in obtaining a loan, the intended ultimate recipient of the borrowed funds, the debtor's qualifications or licenses, or the status of the project being financed. Pet. App. 12a; see, *e.g.*, *In re Carter*, 539 B.R. 753, 757-759 (Bankr. M.D. La. 2015) (debt nondischargeable where debtors represented that they needed loan for home improvements and instead used proceeds to open restaurant); *In re Eversole*, 110 B.R. 318, 323-325 (Bankr. S.D. Ohio 1990) (debt nondischargeable where

debtor requested loan to pay project-related architectural and engineering fees and instead used proceeds to satisfy personal debts); Resp. Br. 34-35 (collecting examples from Fourth Circuit).

In any event, regardless of how this Court resolves the question presented here, Section 523(a)(2)(A) will apply when a debt does not arise from an affirmative representation by the debtor. Section 523(a)(2)(A) "encompasses forms of fraud, like fraudulent conveyance schemes, that can be effected without a false representation." *Husky Int'l Elecs. Inc.* v. *Ritz*, 136 S. Ct. 1581, 1586 (2016) (interpreting "actual fraud"). And a fraud committed through "omission" can also give rise to a debt that is nondischargeable under Section 523(a)(2)(A). Pet. App. 11a. That is true even if the omitted information pertains to the debtor's financial condition. For example, the Social Security Administration (SSA) and other federal agencies frequently invoke Section 523(a)(2)(A) in opposing discharge of debts arising from the overpayment of benefits to persons who fail to notify the government of relevant changes in their financial condition (*e.g.*, increased income from work) despite having a legal duty to do so. See, *e.g.*, *In re Tucker*, 539 B.R. 861, 867-868 (Bankr. D. Idaho 2015); *In re Hall*, 515 B.R. 515, 520-521 (Bankr. S.D. W. Va. 2014); cf. *In re Drummond*, 530 B.R. 707, 710 & n.3 (Bankr. E.D. Ark. 2015) (agreeing that such objections are governed by Section 523(a)(2)(A) rather than by Section 523(a)(2)(B)).[5]

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[5] To receive Social Security benefits, a person must submit a written application that, *inter alia*, describes the applicant's income and assets. See, *e.g.*, 20 C.F.R. 416.203 (Supplemental Security Income).

B. The Statutory Lineage Of The Phrase "Statement Respecting * * * Financial Condition" Reinforces The Conclusion That The Phrase Encompasses Single-Asset Statements

As relevant here, Section 523(a)(2) took on substantially its current form when the Bankruptcy Code was enacted in 1978. Provisions containing similar language, however, existed under prior bankruptcy law. The courts' interpretations of those provisions, and the events leading up to Section 523(a)(2)'s enactment, reinforce the conclusion that a statement about a single asset may constitute a "statement respecting the debtor's * * * financial condition."

1. Before the Code was enacted, federal bankruptcy practice was governed by the 1898 Bankruptcy Act, ch. 541, 30 Stat. 544, as amended. That Act contained two sections of particular relevance here. Section 14 described circumstances in which a discharge would be denied entirely to a debtor. Section 17 enumerated specific categories of debts that were nondischargeable even if the debtor was otherwise eligible for a discharge. See *Field*, 516 U.S. at 64 (identifying these provisions as the "obvious antecedents" of Section 523(a)(2)).

a. As amended in 1903, Section 14 of the Bankruptcy Act denied discharge entirely to a debtor who had "obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit." Act of Feb. 5, 1903, ch. 487, § 4, 32 Stat. 797-798. Thus, at

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Recipients are then obliged to notify SSA of any change in that information, see, *e.g.*, 20 C.F.R. 404.1588, 416.988, and SSA relies on such notice to effectuate necessary benefits changes in a timely manner.

that time, a debtor who made *written* misrepresentations to obtain property *on credit* could not obtain discharge of *any* of his debts. Section 17 applied more broadly to "liabilities for obtaining property by false pretenses or false representations," but it imposed the more limited consequence of precluding discharge of the particular debt that arose from such conduct. *Id.* § 5, 32 Stat. 798.

In the ensuing years, courts interpreted Section 14 to prevent a debtor's discharge only if the debtor's written misstatements had been made to a creditor directly (or, after a 1910 amendment, to a creditor's "representative," see Act of June 25, 1910, ch. 412, § 6, 36 Stat. 839-840). Section 14 thus did not extend to debtor misstatements made to third parties, including credit agencies on whose reports creditors often relied. See, *e.g.*, *J. W. Ould Co.* v. *Davis*, 246 F. 228, 231 (4th Cir. 1917). In 1926, to address this perceived gap in the statute, Congress amended Section 14 to bar discharge entirely for any debtor who had "obtained money or property on credit, or obtained an extension or renewal of credit, by making or publishing, or causing to be made or published, in any manner whatsoever, a *materially false statement in writing respecting his financial condition.*" Act of May 27, 1926, ch. 406, § 6, 44 Stat. 663-664 (emphasis added).

Congress subsequently concluded, however, that this provision had led to significant creditor abuse. "[U]nscrupulous lenders" came to "condone[], or even encourage[], the issuance of statements omitting debts with the deliberate intention of obtaining a false agreement for use in the event that the borrower subsequently goes into bankruptcy." H.R. Rep. No. 1111, 86th Cong., 1st Sess. 2 (1959) (*1959 House Report*). Section 14 gave

such creditors a "powerful weapon with which to intimidate a debtor into entering into an agreement in which the creditor agrees not to oppose the [debtor's] discharge in return for the debtor's agreement to pay the debt in full after discharge." *Ibid.* Some legislators proposed to respond to this abuse by entirely deleting the clause of Section 14 that barred discharge for any debtor who had made a "false statement in writing respecting his financial condition." See, *e.g.*, H.R. Rep. No. 785, 85th Cong., 1st Sess. 4 (1957) (reporting a bill that would have taken that step).

Congress ultimately decided, however, to adopt an intermediate approach. In 1960, Congress amended Section 14's categorical discharge bar for debtors who had made false written statements respecting their financial condition in order to limit that bar to debtors "engaged in business." Act of July 12, 1960, Pub. L. No. 86-621, § 1, 74 Stat. 408. With respect to nonbusiness debtors, Congress determined that the particular debts arising from such false statements should remain nondischargeable, even though other debts could be discharged. To achieve that result, Congress simultaneously amended Section 17 to preclude discharge of, *inter alia*, "liabilities * * * for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon *a materially false statement in writing respecting* [*the debtor's*] *financial condition* made or published or caused to be made or published in any manner whatsoever with intent to deceive." *Id.* § 2, 74 Stat. 409 (emphasis added); see *1959 House Report* 3 (describing purpose of this Section 17 amendment).

b. Both before and after the 1960 amendments, courts construed the phrase "materially false statement in writing respecting [a debtor's] financial condition" to

encompass not only statements that purported to list all of a debtor's assets and liabilities, but also statements that addressed only one or some of a debtor's assets. In rejecting a debtor's argument that his false written statement about "accounts which ha[d] no existence whatsoever" was not a statement respecting his financial condition, the Sixth Circuit observed that "[n]o cases have been cited to us, and none has been found by careful examination, which confines a statement respecting one's financial condition as limited to a detailed statement of assets and liabilities." *Albinak* v. *Kuhn*, 149 F.2d 108, 110 (1945); cf., *e.g.*, *In re Weiner*, 103 F.2d 421, 423 (2d Cir. 1939) (false statement about debtor asset pledged as collateral was statement respecting financial condition).

Decisions in the three decades following *Albinak* remained consistent with the understanding that a statement about a single asset could qualify as a statement respecting financial condition. See, *e.g.*, *Tenn* v. *First Hawaiian Bank*, 549 F.2d 1356, 1357-1358 (9th Cir.) (per curiam) (holding that "appellants' recordation of [a false] deed * * * for the purpose of obtaining an extension of credit on the basis of an asset that they did not own was a false statement of financial condition"), cert. denied, 434 U.S. 832 (1977); *Shainman* v. *Shear's of Affton, Inc.*, 387 F.2d 33, 38 (8th Cir. 1967) ("A written statement purporting to set forth the true value of a major asset of a corporation, its inventory, is a statement respecting the financial condition of that corporation."); *Scott* v. *Smith*, 232 F.2d 188, 190 (9th Cir. 1956) ("The bankrupt's implied representation * * * that he then had some ownership or control of property * * * available for hypothecation by him, amounts to a statement 'respecting his financial condition.'").

c. In 1970, Congress established a commission to study and recommend changes to the federal bankruptcy system. In its final report, that commission concluded that, even after the 1960 amendments described above, creditors had continued to abuse the "false statement in writing respecting * * * financial condition" provision then set forth in Section 17. *Report of the Commission on the Bankruptcy Laws of the United States*, H.R. Doc., 93d Cong., 1st Sess. Pt. I, at 176 (1973). The commission concluded that "the abuses and the harmful effects [to debtors] far outweigh[ed] the benefit to creditors by this exception." *Ibid.* The commission recommended not only that Congress eliminate the specific exception for consumer debts resulting from false written statements respecting financial condition, but also that Congress make Section 17's more general fraud exception inapplicable to consumer debtors. See H.R. 31, 94th Cong., § 4-506(a)(2) (1975) (commission-sponsored bill) (proposing to apply Section 17's fraud exceptions to discharge only to "debt[s] other than a consumer debt").

Congress did not adopt the commission's recommendation to make Section 17 inapplicable to consumer debts. Congress also decided generally to "continue[] the exception to discharge based on a false statement in writing concerning the debtor's financial condition." H.R. Rep. No. 595, 95th Cong., 1st Sess. 129 (1977) (*1977 House Report*). To "balance the scales more fairly," however, Congress undertook "some modifications" to that exception, including by requiring "reasonable reliance" in lieu of lesser reliance and by requiring certain unsuccessful creditors to pay "costs, attorney's fees, and damages to a consumer debtor." *Id.* at 129-131; see

11 U.S.C. 523(a)(2)(B)(iii) and (d). Congress also specified that the general discharge exception for fraud would apply only to frauds committed "other than" through a "statement[] respecting the debtor's * * * financial condition," 11 U.S.C. 523(a)(2)(A), and that frauds committed through use of such a statement would instead be governed by a distinct provision that required proof of a "writing," 11 U.S.C. 523(a)(2)(B). These Code provisions retained the words "statement respecting * * * financial condition" that had appeared in prior bankruptcy law.

2. a. The sequence of events described above reinforces the conclusion that the phrase "statement respecting * * * financial condition" in current Section 523(a)(2) encompasses statements about particular assets. Multiple appellate courts had previously construed the same phrase to cover such statements. When "Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." *Lorillard* v. *Pons*, 434 U.S. 575, 581 (1978). It is therefore logical to presume that, when it incorporated the phrase into the current Bankruptcy Code in substantially the same form, Congress "inten[ded] to incorporate its * * * judicial interpretations as well." *Bragdon* v. *Abbott*, 524 U.S. 624, 645 (1998); cf., *e.g.*, *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559 U.S. 573, 590 (2010) (even if the interpretation of prior statutory language by "three Federal Courts of Appeals" did not definitively "'settle[]'" its meaning, "there [was] no reason to suppose that Congress disagreed with those interpretations when it enacted" a new statute containing the same language).

b. The inferences that petitioner would draw from this history are unwarranted. Petitioner identifies (Br. 43-45 & n.5) a number of pre-1978 decisions that applied the Bankruptcy Act to comprehensive financial representations and that petitioner characterizes as reflecting the "mine run" of cases. None of those decisions held, however, that *only* a comprehensive representation could qualify as a "false statement in writing respecting [a debtor's] financial condition." Indeed, the suggestion that these decisions explored the full range of covered misstatements is inconsistent with petitioner's own theory, under which the phrase would encompass highly generalized representations of financial soundness (*e.g.*, "I am above water") that differ from the more detailed representations involved in the cases that petitioner invokes. See pp. 16-17, *supra*.

Petitioner also emphasizes (Br. 21, 45) that, before 1978, a broad interpretation of the phrase "materially false statement in writing respecting [the debtor's] financial condition" favored *creditors*, by excepting more debts and debtors from discharge. Under current law, by contrast, a broad interpretation of the phrase "statement respecting the debtor's * * * financial condition" favors *debtors*, since debts obtained through false statements of that nature will be nondischargeable only if the statement was in writing and the creditor's reliance was reasonable. See 11 U.S.C. 523(a)(2)(B). Petitioner finds no "indication in the legislative record that Congress had any major shift like this in mind." Pet. Br. 36.

It may well be uncommon for Congress to incorporate preexisting statutory language into a new provision that is intended to achieve a significantly different policy result. But Congress incontrovertibly took that step when it enacted Section 523(a)(2). Congress's decision

to afford meaningfully different treatment to "statement[s] respecting * * * financial condition" is apparent from the face of the statute itself, which expressly excludes such statements from Section 523(a)(2)(A) and then specifically addresses them in the next subparagraph. And the contrast between the two subparagraphs makes clear that the nondischargeability of a debt incurred through fraud will be *more difficult* to establish if the misrepresentation concerns the debtor's "financial condition." Those legislative choices provide no sound basis for rejecting the usual inference that preexisting statutory language incorporated into an amended law retains its prior meaning.

Finally, petitioner emphasizes (Br. 20, 28, 36-38, 40) the *1977 House Report*'s reference to one abusive practice through which creditors had induced the creation of incomplete statements in order to render the creditors' debts nondischargeable. *1977 House Report* 130-131. Petitioner implies that Congress enacted Section 523(a)(2)(B) to address only that particular abusive practice. As respondent explains (Br. 49-50), however, it is not apparent that even petitioner's interpretation would capture the practice that the House committee had identified, which apparently involved debt statements rather than "holistic snapshot[s]" or comprehensive lists of all assets and liabilities (Pet. Br. 29). Moreover, the abusive practice identified in the *1977 House Report* was one that had long been associated with written statements. The requirement that statements respecting financial condition be made "in writing" to render a debt nondischargeable, 11 U.S.C. 523(a)(2)(B), thus cannot reasonably be understood to have been enacted for the purpose of redressing that particular abuse.

C. The Court Of Appeals' Interpretation Of Section 523(a)(2) Is Consistent With Congress's Apparent Purposes

Petitioner asserts that, "[u]nder the Eleventh Circuit's interpretation, fraudsters can swindle innocent victims for money, property, or services by lying about their finances, then discharge the resulting debt in bankruptcy, just so long as they do so orally." Pet. Br. 35. Petitioner asserts (*e.g.*, Br. 5-6, 19-20, 33, 34-36) that this result is inconsistent with the overarching principle that the bankruptcy laws exist to protect the "honest but unfortunate debtor." *Cohen* v. *de la Cruz*, 523 U.S. 213, 217 (1998) (citation omitted). That policy concern provides no sound basis for refusing to give Section 523(a)(2) the reading that follows most naturally from its text and history.

1. The text of Section 523(a)(2) unambiguously directs that, for purposes of the fraud exception to the discharge of debts in bankruptcy, false "statement[s] respecting the debtor's * * * financial condition" will be treated differently from other fraudulent misrepresentations. In particular, a creditor who claims to have relied on a false "statement respecting the debtor's * * * financial condition" can invoke Section 523(a)(2) as a basis for opposing discharge only if the false statement was made in writing. Congress's reasons for imposing that requirement are not entirely clear. The 1978 Bankruptcy Code's legislative history suggests, however, that Congress's distinct treatment of this class of false statements rests at least in part on "the peculiar potential of financial statements to be misused not just by debtors, but by creditors who know their bankruptcy law." *Field*, 516 U.S. at 76.

Petitioner acknowledges (Br. 28, 35) that, if a debtor's false oral description of his assets and liabilities is sufficiently comprehensive, Section 523(a)(2)'s bar on discharge does not apply. In determining whether the Eleventh Circuit's decision is consistent with Congress's policy judgments, the most immediate point of reference is the specific policy judgment, reflected in Section 523(a)(2) itself, that a false oral "statement respecting * * * financial condition" will not preclude discharge of the resulting debt—not the more general policy that bankruptcy relief ordinarily should be available only to honest but unfortunate debtors. Within the particular statutory context in which the phrase "statement respecting the debtor's * * * financial condition" appears, petitioner has identified no sound policy rationale for distinguishing comprehensive oral catalogues of assets and liabilities from oral representations concerning the value of a particular asset.

Section 523(a)(2)'s discharge bar applies only if the creditor actually relied on the debtor's false statement in deciding to provide money or other things of value. See *Field*, 516 U.S. at 66; p. 3, *supra*. Thus, while many statements by debtors about specific assets may be irrelevant to creditors' financial decisions, Section 523(a)(2) is concerned only with statements that actually affect creditor behavior. Here, for example, a partner in the petitioner law firm "testified that [petitioner] agreed to continue its representation of [respondent] and forego collection activities in reliance upon [respondent's] representations regarding the tax refund." Pet. App. 61a. When a debtor's statement about a particular asset is offered as evidence of his ability to pay, and the statement actually induces a creditor to provide money, property, services, or credit, there is no evident

reason to treat that statement differently than when a statement about the debtor's overall finances is offered for the same purpose and has the same effect.

The distinct treatment of "statement[s] respecting the debtor's * * * financial condition" that is mandated by Section 523(a)(2) "gives creditors an incentive to create writings before the fact," which generates "reliable evidence" for future litigation. Pet. App. 13a. And the decision whether to rely on an oral statement about a counterparty's finances, or instead to insist on confirming that statement in writing, is within the creditor's own control. To be sure, with respect to misrepresentations *other than* those "respecting the debtor's * * * financial condition," Congress declined to limit Section 523(a)(2)'s exception to discharge to debts arising from written misrepresentations. But given Congress's apparent view that statements about debtors' financial circumstances had previously been used to facilitate abusive creditor practices (see pp. 22-25, *supra*), Congress could reasonably choose to provide debtors additional protection for that class of statements.

2. Petitioner's interpretation of Section 523(a)(2) does not appear to reflect any coherent understanding of Congress's policy goals. There is no evident reason why Congress would require vague general representations (*e.g.*, "I am in good financial shape") to be put in writing, while omitting such a requirement for representations that are far more detailed and precise (*e.g.*, "I pledge as collateral my boat, which is currently worth $50,000 and is not subject to any superior security interest"). And to the extent petitioner's interpretation of "statement respecting * * * financial condition" is intended to identify the universe of statements on which

creditors customarily rely to discern a debtor's creditworthiness or ability to pay, its interpretation is significantly underinclusive.

Many consumer lenders do not require comprehensive financial information before deciding whether to lend. See, *e.g.*, 82 Fed. Reg. 54,472, 54,480-54,481 (Nov. 17, 2017) (noting that "payday" lenders typically require information only about an individual's income and personal deposit accounts, and not about a borrower's other financial obligations or credit score). Indeed, many creditors rely principally on the value of a particular asset—for instance, property pledged or offered as collateral, see *Joelson*, 427 F.3d at 703—in deciding whether a debtor's financial circumstances justify the transaction. And in any event, Section 523(a)(2) is concerned only with false statements that induce reliance and thereby affect creditor behavior. See pp. 14-15, 30, *supra*.

Petitioner's interpretation also would yield different results depending on whether a debtor's financial representations are made piecemeal or instead all at once. Under petitioner's approach, if a creditor asks the debtor for a comprehensive statement of his financial condition, and the debtor misrepresents his salary within that statement, the creditor would need to satisfy the requirements of Section 523(a)(2)(B) in order to prevent discharge of the debt. But if the creditor had previously obtained a comprehensive statement of the debtor's financial condition, and requested an update only as to the debtor's salary, petitioner would apparently view that update as a statement about a "single asset" and therefore not one respecting the debtor's financial condition. Here, for example, petitioner may have refrained from requesting any comprehensive statement

of respondent's assets and liabilities at the March and November 2005 meetings only because it was already generally familiar with respondent's overall financial circumstances. See J.A. 42-43, 68, 71-72, 79-81, 85. An interpretation that gave decisive weight to this distinction would both produce arbitrary results and encourage creditor gamesmanship.[6]

3. Reasonable people can debate the wisdom of Congress's decision to allow discharge of debts for money or property obtained through false oral "statement[s] respecting the debtor's * * * financial condition." Indeed, a contrary approach would serve the interests of the United States in its capacity as the Nation's largest creditor. But once that basic policy judgment is taken as given, there is no sound reason to view it as inapplicable to the misrepresentation at issue in this case. Respect for Congress's policy determinations thus reinforces the most natural reading of the statutory text.

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[6] The fact that this case concerns "a statement about a single asset," as petitioner emphasizes (*e.g.*, Br. 18, 46), may also reflect petitioner's litigation choices as much as it does respondent's conduct. In bringing suit in bankruptcy court, petitioner alleged that respondent not only had lied about his tax refund, but also had falsely stated that he had "no [other] monies available" with which to pay petitioner when in fact he owned retirement assets that could have been liquidated for that purpose. C.A. App. A41; see also J.A. 66-67 (same). Yet petitioner elected not to "sue[] upon" this alleged broader misrepresentation about respondent's financial condition, C.A. App. A41, and instead focused its complaint solely on respondent's statements about the tax refund.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

11 U.S.C. 523 provides in pertinent part:

Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

* * * * *

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C)(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the

relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

* * * * *